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Mr. Paul Morantz
Attorney at Law
P.O. Box 511
Pacific Palisades, California 90272

Dear Mr. Morantz:

Further reference is made to the claim of Gale Robinson and Beverly Robinson for $1 million under the Federal Tort Claims Act, as amended, and an Act of August 1, 1956, based upon the wrongful death of Gregory Robinson on November 18, 1978, in Jonestown, Guyana, as a result of the alleged wrongful conduct of officers of the Department of State.

Claimants allege, in part, as follows:

"On or about November 14, 1978, the decedent, at the request of government employee, United States Representative Leo J. Ryan, accompanied an official United States government fact-finding mission to the country of Guyana, South America, for the purpose of investigating reports of mistreatment of American citizens in the colony of Jonestown, Guyana. Said citizens were constituents from Congressman Ryan's district in California, or relatives of constituents. Ryan had gone to the colony of Jonestown at the request of many of his congressional district constituents who had brought him reports of severe mistreatment of their relatives, including torture, assaults and deaths occurring in said colony of Jonestown, Guyana.

"The above described mission was made with the authorization of, and funded by, the United States Congress Committee on International Relations. At the time of the mission, it was known to Congressman Ryan and the United States, or should have reasonably been known, that the People's Temple had weapons, were dangerous and that the followers of Jim Jones were brainwashed to the point they would even follow his command to kill. In addition, it was known, or should have been known, that Jim Jones was sensitive and paranoid to

media reports and extremely concerned about his public image. In fact, Jim Jones led his followers to Jonestown, following an expose on the group in New West Magazine. Despite said knowledge, Congressman Ryan and the United States Government allowed and solicited news media personnel to join the mission so Congressman Ryan and the United States Government could obtain publicity. Said news media personnel were encouraged to train their cameras upon Jim Jones and ask incriminating questions of Jim Jones, despite previous knowledge that the same would inflame his paranoia and anger. Not only was this allowed knowingly by the United States Government, but said government failed to supply necessary information to the media personnel or safety protection. In particular, Congressman Ryan had knowledge of People's Temple activities, including suicide drills and paranoid atmosphere, but also had knowledge of brainwashing techniques and their danger from his studies of other cults.

* * * * * *

"As a result of lack of precautions and warning, the decedent, on November 18, 1978, was killed in an attack made upon the mission party by members of the People's Temple who were armed with automatic weapons."

In accordance with the provisions of the first paragraph of 28 U.S.C. 2672, the Secretary of State is authorized to consider and settle administratively tort claims arising as a consequence of the negligent or wrongful act or omission of any employee of the Department acting within the scope of his employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Section 2669(f) of Title 22 of the United States Code extends the tort claim authority of the Secretary to claims arising in foreign countries in connection with Department of State operations abroad.

The events surrounding Congressman Ryan's visit to Jonestown, Guyana, resulted in the deaths of over 900 people. In the Department's view, this was a shocking, unprecedented and wholly unforeseen tragedy. Congressman Ryan and the Department believed that the Congressman's party might encounter

difficulties in gaining permission to enter Jonestown, particularly if members of the concerned relatives group and representatives of the news media were included in the party; however, no one believed that anyone would be physically attacked, let alone killed. The Department shared with Congressman Ryan all information available to it regarding the Jonestown community, including the reports of Embassy officials who visited Jonestown, and he was accompanied on his visit by the Deputy Chief of Mission of the Embassy, who was seriously wounded in the attack. On the basis of available information, particularly prior visits to Jonestown by a large number of public officials and private citizens, there was no reasonable cause to anticipate the possibility of violence against the Congressman's party.

Regardless of the substantive merit, if any, of the claimants' allegations, the question of whether the alleged acts or omissions constituted a cause of action under the Federal Tort Claims Act must be determined by referring to the law of the place where the tort occurred (28 U.S.C. 2672, 22 U.S.C. 2669(f)). Since the conduct complained of occurred in Washington, D. C. and/or Guyana, claimants must show that the United States Government, if a private person, would be liable to the claimants in accordance with the laws of Washington, D. C. or Guyana. They have not done so. In the absence of establishing such liability, the claim must be denied. (Richards v. U.S., 369 U.S. 1, 82 S. Ct. 585, 7 L. ed. 2d 482 (1962); Rayonier, Inc. v. U.S., 352 U.S. 315, 77 S. Ct. 374, 7 L. ed. 2d 354 (1957); Massachusetts Bonding Co. v. U.S., 352 U.S. 128, 77 S. Ct. 186, 1 L. ed. 2d (1956).)

Regardless of whether the alleged tort occurred within the United States or Guyana, a further question arises as to whether the circumstances of the case can give rise to a valid claim under the Federal Tort Claims Act or the Act of August 1, 1956 (22 U.S.C. 2669(f)). It is the Department's conclusion that it cannot.

Under the Constitution of the United States the President is empowered to conduct the foreign relations of the United States (Article II, Section 2). The Secretary of State has the statutory authority to manage the foreign relations of the United States (22 U.S.C. 2656). Such functions are discretionary in nature (Marbury v. Madison, 1 Cranch, 137, 165-66 (1803)). Under the Federal Tort Claims Act, any claim based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not it is abused, is excepted from coverage (28 U.S.C. 2680).

The conduct of the Department and its officers and employees with respect to Congressman Ryan and his group and the U.S. citizens group at Jonestown clearly involved the exercise of discretionary functions. Employees and officers of the Department were required to exercise judgment and discretion in reporting conditions in Jonestown, communicating relevant information to Congressman Ryan and his group, arranging schedules and appointments, and rendering general assistance to the group while it was in Guyana and Jonestown in particular. The United States Court of Appeals for the Fifth Circuit stated, in connection with a claim involving the Department of State, as follows in the case of Four Star Aviation, Inc. v. United States of America:

> "Such decisions would have involved the exercise of judgment and discretion with respect to a matter involving our international relations and affecting our foreign policy and the Federal Tort Claims Act would not have applied thereto." (409 F. 2d 292, 295 (1969).)

The Department of State deeply regrets the losses suffered by the family of Gregory Robinson and the relatives of other victims involved in the Jonestown incident.

The Federal Tort Claims Act provides for suit against the Government of the United States in the appropriate United States District Court for claims arising in the United States in the event the claimant does not concur with an administrative decision regarding such claim. Such suit must be filed not later than six months after the date an administrative determination is mailed. The Act does not provide for suit against the Government of the United States for claims arising outside the United States.

This determination is limited to the activities of the Department of State in the matter.

Sincerely yours,

FAK

Fabian A. Kwiatek
Assistant Legal Adviser

cc: American Embassy
Georgetown, Guyana

L/C:FAKwiatek:mb 12/2/80

Clearances:
L/ARA:MGKozak
ARA/CAR:JBRickert